mother, in terms of her last will;" he then disposed of the residue of the said estate and effects. The testator's death occurred in 1903. The estate and effects out of which the legacy was payable were subject to a life interest of the testator's father, who died in 1910. Mr. Justice Joyce had held that the legacy carried interest at 4 per cent. per annum only from 1910, and applied the authority of Earle *v.* Billingham (27 L. J., Ch. 545). The Court of Appeal, however, reversed the Court below and held, distinguishing the special circumstances of Earle *v.* Billingham, that the true rule applicable here was that laid down by Lord Cairns, in In re Lord's Estate; Lord *v.* Lord (36 L. J., Ch. 533), that "a legacy payable at a future day carries interest only from the time fixed for its payment; on the other hand, where no time for payment is fixed, the legacy is payable at, and therefore bears interest from, the end of a year after the testator's death, even though it be expressly made payable out of a particular fund, which is not got in until after a longer interval." This judgment the House of Lords have affirmed, and held that, as no direction could be found here that the legacy was not to be paid until the fund fell in, the right to payment arose and interest ran from twelve months after the death of the testator.—London Law Journal.

Note.—In Virginia we have the general rule that a legacy is payable one year after appointment of executor, and bears interest from that time unless a different time is fixed by the will when interest is to begin. Moorman *v.* Crockett, 90 Va. 185, 17 S. E. 875. Independently of the statute (Code, § 2706), the common-law rule would apply, as in the principal case, and interest would begin after a year from the testator's death. Shobe *v.* Carr, 3 Munf. 10. As to whether the rule should be applied to a demonstrative legacy, when the fund out of which the legacy is payable is not realized until after the year, we have no Virginia decision, but a West Virginia case, Bradford *v.* McConihay, 15 W. Va. 732, is in point. There it is held that a legacy to be paid out of a fund arising from the sale of real estate, which is not sold until after the year, bears interest from a year after death of the testator.

And in Koon's appeal, 5 Cent. Rep. 259, 133 Pa. 621, it was held that the fact that a residuary estate out of which a legacy could be paid was in part composed of a trust fund, which did not fall into the residuary estate until twenty-six years after the death of the testator, does not prevent the above rule from taking effect. In this case it is said that the general rule will not yield to the impossibility of getting in the estate so as to pay the legacy within the year allowed for that purpose.

Banker's Custom.—To make a custom good in the Courts it must be reasonable, certain and compulsory, and consistent with the gen-

eral law. Several customs complying with these conditions have been recognised by the Court in regard to negotiable instruments, such as the effect of crossing a cheque generally or specially; but an attempt was made last week to establish a novel usage in relation to the employment of such securities by bill-brokers in the case of Lloyd's Bank, Ltd., and Union of London Bank *v.* Swiss Bankverein. The plaintiffs had advanced to a firm of bill-brokers against securities large sums of "short money," and, following a regular usage of bankers, they handed over the securities in return for a cheque for the amount due to them. Later in the day the bill-brokers deposited the same securities with the defendant bank to secure a similar loan. The cheque given to the plaintiffs was dishonoured, and the brokers failed; and the issue between the contesting banks was as to which of them was entitled to hold the securities, which consisted entirely of negotiable instruments. It was advanced by the plaintiffs that there was a practice of bankers, which had either the effect of a custom or of a trust, under which the bill-broker held the securities returned to him as custodian for the lending bank till his cheque had been met, subject only to a power to negotiate them for value with a person who had not notice of his obligation; and that being so, the claim of the defendant bank, which had subsequently lent the money, was postponed to that of the plaintiffs. The Court, however, found that the custom was not so well established or so certain as to have legal validity. There was a general understanding that the broker would pledge the securities restored to him so as to be able to meet the cheque which he had given in exchange, but seeing that he could pass a good title to a bona-fide holder for value and had a general authority to sell or exchange the securities, he could not be deemed to hold them in a fiduciary capacity. When the confidence of the lending bank proves to have been misplaced, it has no good legal title against another creditor who has received possession of the securities in the regular way of business. To impose on negotiable instruments in this way a constructive trust would be a revolutionary innovation; and, while it was urged that the decision in favour of the defendant bank would revolutionise the course of business between bankers and bill-brokers, Mr. Justice Hamilton was not moved by this alarmist view. The great business of the City of London is built upon a basis of mutual credit and faith; and it is that fact, more than any doubtful custom, which is the real security of bankers.—London Law Journal.

Note—This would seem to be an example of a custom set up contravening a rule of law—the rule the holder of a negotiable instrument passes good title to a taker in due course of business, and a constructive trust cannot be imposed upon such instrument in the taker's hands by any custom.

It has been held that as a gneral rule, usage and custom will not justify negligence. A usage and custom opposed to the policy of the law

is unreasonable and invalid. Minneapolis Sash, etc., Co. *v.* Metropolitan Bank (Minn.), 44 L. R. A. 504. See, also, Merchants Nat. Bank *v.* Goodman, 109 Pa. St. 422, 58 Am. Rep. 728.

It was, however, held in Kershaw *v.* Ladd, 34 Ore. 375, 44 L. R. A. 236, that a custom of banks to send a check direct to the drawee bank for collection and return is not unreasonable, at least as applied to the collection of a plain unendorsed check. The court said:

"A custom which obtains so generally and universally among men of the highest order of business sagacity appeals strongly to the understanding for recognition, and, unless demonstrated to be clearly and palpably unreasonable and unjust, it ought to be adopted as the law of the case. It is true, the admittedly prevailing custom or usage exists and applies as well to certified checks, certificates of deposits, and notes payable at the banks; but we are here dealing with a simple, unindorsed check, and are only called upon at this time to sanction the custom or usage in so far as it may be potent as affecting the present exigencies. However there is authority for the sanction of it to the full extent prevailing, as denoted by the agreement of the parties here. Farmers' Bank & T. Co. *v.* Newland, 97 Ky. 464; Jefferson County Sav. Bank *v.* Commercial Nat. Bank, 98 Tenn. 337. Usages are presumed to be reasonable, and in considering them the courts do not so much determine whether they are supported by satisfactory grounds as whether they are necessarily unreasonable. The party attacking the usage or custom has, therefore, the burden of the controversy, as the question to be decided in a particular case is not whether the usage is reasonable, but whether it is unreasonable. 27 Am. & Eng. Enc. Law, p. 766. Citing and attempting to distinguish cases contra."

But is must be remembered that much of the law of banking, as well as of commercial paper, has grown out of custom. See Allen *v.* Merchants' Bank, 22 Wend. 215, 34 Am. Dec. 289; Bell *v.* Hagerstown Bank, 7 Gill 227; Commercial Bank of Ky. *v.* Varnum, 49 N. Y. 269; Munn *v.* Burch, 25 Ill. 35. In Century Bank *v.* Davis, 19 Pick. 373, it is said that all who transact business at a bank must be presumed to conform to its modes of doing business, so far as they are known to them.

But a custom must be uniform, certain, and sufficiently notorious. Citizens' Bank of Balt. *v.* Grafflin, 35 Md. 507, 1 Am. Rep. 66. It is in this respect that the custom alleged in the principal case was held deficient also.

The custom of a bank may be proved to interpret, though not to establish a contract. Harper *v.* Calhoun, 7 How. (Miss.), 203.

In line with the principal case are Springfield *v.* Vivian, 63 Mich. 681, where it is held that a local custom cannot change the law of negotiable instruments, unless the paper is local; Baltimore, etc., Bank *v.* Toliver, 72 Md. 164, where it is held that custom can not change the local character and the power of attorney so as to make registered Virginia consuls negotiable, when accompanied by power of attorney.

Oiling up the Wheels of Justice.—A deaf ear can no longer be turned to the great cry which has long emanated from the public denouncing the law's delay and reversals because of technicalities. Courts are forced to give heed to this strong demand, and the maxim is finding more and more support, "Justice delayed is justice denied." Reversals, because of trifling technicalities in procedure, process, etc.,